

110TH CONGRESS
2D SESSION

H. R. 6355

To amend title 49, United States Code, to provide for improvements in the quality of airline services, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JUNE 24, 2008

Mr. OBERSTAR (for himself and Mr. COSTELLO) introduced the following bill; which was referred to the Committee on Transportation and Infrastructure

A BILL

To amend title 49, United States Code, to provide for improvements in the quality of airline services, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Air Service Improvement Act of 2008”.

6 (b) TABLE OF CONTENTS.—

Sec. 1. Short title; table of contents.

Sec. 2. Amendments to title 49, United States Code.

TITLE I—AIR SERVICE IMPROVEMENTS

Sec. 101. Monthly air carrier reports.

Sec. 102. Air passenger service improvements.

Sec. 103. Review of air carrier flight delays, cancellations, and associated causes.

Sec. 104. European Union rules for passenger rights.

Sec. 105. Establishment of advisory committee for aviation consumer protection.

Sec. 106. Denied boarding compensation.

Sec. 107. Expansion of DOT airline consumer complaint investigations.

TITLE II—FAA EMPLOYEES

Sec. 201. Federal Aviation Administration personnel management system.

1 **SEC. 2. AMENDMENTS TO TITLE 49, UNITED STATES CODE.**

2 Except as otherwise expressly provided, whenever in
3 this Act an amendment or repeal is expressed in terms
4 of an amendment to, or a repeal of, a section or other
5 provision, the reference shall be considered to be made to
6 a section or other provision of title 49, United States
7 Code.

8 **TITLE I—AIR SERVICE** 9 **IMPROVEMENTS**

10 **SEC. 101. MONTHLY AIR CARRIER REPORTS.**

11 (a) IN GENERAL.—Section 41708 is amended by
12 adding at the end the following:

13 “(c) DIVERTED AND CANCELLED FLIGHTS.—

14 “(1) MONTHLY REPORTS.—The Secretary shall
15 require an air carrier referred to in paragraph (2)
16 to file with the Secretary a monthly report on each
17 flight of the air carrier that is diverted from its
18 scheduled destination to another airport and each
19 flight of the air carrier that departs the gate at the

1 airport at which the flight originates but is cancelled
2 before wheels-off time.

3 “(2) APPLICABILITY.—An air carrier that is re-
4 quired to file a monthly airline service quality per-
5 formance report under subsection (b) shall be sub-
6 ject to the requirement of paragraph (1).

7 “(3) CONTENTS.—A monthly report filed by an
8 air carrier under paragraph (1) shall include, at a
9 minimum, the following information:

10 “(A) For a diverted flight—

11 “(i) the flight number of the diverted
12 flight;

13 “(ii) the scheduled destination of the
14 flight;

15 “(iii) the date and time of the flight;

16 “(iv) the airport to which the flight
17 was diverted;

18 “(v) wheels-on time at the diverted
19 airport;

20 “(vi) the time, if any, passengers
21 deplaned the aircraft at the diverted air-
22 port; and

23 “(vii) if the flight arrives at the sched-
24 uled destination airport—

1 “(I) the gate-departure time at
2 the diverted airport;

3 “(II) the wheels-off time at the
4 diverted airport;

5 “(III) the wheels-on time at the
6 scheduled arrival airport; and

7 “(IV) the gate arrival time at the
8 scheduled arrival airport.

9 “(B) For flights cancelled after gate de-
10 parture—

11 “(i) the flight number of the cancelled
12 flight;

13 “(ii) the scheduled origin and destina-
14 tion airports of the cancelled flight;

15 “(iii) the date and time of the can-
16 celled flight;

17 “(iv) the gate-departure time of the
18 cancelled flight; and

19 “(v) the time the aircraft returned to
20 the gate.

21 “(4) PUBLICATION.—The Secretary shall com-
22 pile the information provided in the monthly reports
23 filed pursuant to paragraph (1) in a single monthly
24 report and publish such report on the Web site of
25 the Department of Transportation.”.

1 (b) EFFECTIVE DATE.—The Secretary of Transpor-
 2 tation shall require monthly reports pursuant to the
 3 amendment made by subsection (a) beginning not later
 4 than 90 days after the date of enactment of this Act.

5 **SEC. 102. AIR PASSENGER SERVICE IMPROVEMENTS.**

6 (a) IN GENERAL.—Subtitle VII is amended by insert-
 7 ing after chapter 421 the following:

8 **“CHAPTER 423—AIR PASSENGER SERVICE**
 9 **IMPROVEMENTS**

“Sec.

“42301. Emergency contingency plans.

“42302. Consumer complaints.

“42303. Use of insecticides in passenger aircraft.

10 **“§ 42301. Emergency contingency plans**

11 “(a) SUBMISSION OF AIR CARRIER AND AIRPORT
 12 PLANS.—Not later than 90 days after the date of enact-
 13 ment of this section, each air carrier providing covered air
 14 transportation at a large hub airport or medium hub air-
 15 port and each operator of a large hub airport or medium
 16 hub airport shall submit to the Secretary of Transpor-
 17 tation for review and approval an emergency contingency
 18 plan in accordance with the requirements of this section.

19 “(b) COVERED AIR TRANSPORTATION DEFINED.—In
 20 this section, the term ‘covered air transportation’ means
 21 scheduled passenger air transportation provided by an air
 22 carrier using aircraft with more than 60 seats.

23 “(c) AIR CARRIER PLANS.—

1 “(1) PLANS FOR INDIVIDUAL AIRPORTS.—An
2 air carrier shall submit an emergency contingency
3 plan under subsection (a) for—

4 “(A) each large hub airport and medium
5 hub airport at which the carrier provides cov-
6 ered air transportation; and

7 “(B) each large hub airport and medium
8 hub airport at which the carrier has flights for
9 which it has primary responsibility for inventory
10 control.

11 “(2) CONTENTS.—An emergency contingency
12 plan submitted by an air carrier for an airport under
13 subsection (a) shall contain a description of how the
14 air carrier will—

15 “(A) provide food, water that meets the
16 standards of the Safe Drinking Water Act (42
17 U.S.C. 300f et seq.), restroom facilities, cabin
18 ventilation, and access to medical treatment for
19 passengers onboard an aircraft at the airport
20 that is on the ground for an extended period of
21 time without access to the terminal;

22 “(B) allow passengers to deplane following
23 excessive delays; and

24 “(C) share facilities and make gates avail-
25 able at the airport in an emergency.

1 “(d) AIRPORT PLANS.—An emergency contingency
2 plan submitted by an airport operator under subsection
3 (a) shall contain a description of how the airport operator,
4 to the maximum extent practicable, will provide for the
5 deplanement of passengers following excessive delays and
6 will provide for the sharing of facilities and make gates
7 available at the airport in an emergency.

8 “(e) UPDATES.—

9 “(1) AIR CARRIERS.—An air carrier shall up-
10 date the emergency contingency plan submitted by
11 the air carrier under subsection (a) every 3 years
12 and submit the update to the Secretary for review
13 and approval.

14 “(2) AIRPORTS.—An airport operator shall up-
15 date the emergency contingency plan submitted by
16 the airport operator under subsection (a) every 5
17 years and submit the update to the Secretary for re-
18 view and approval.

19 “(f) APPROVAL.—

20 “(1) IN GENERAL.—Not later than 9 months
21 after the date of enactment of this section, the Sec-
22 retary shall review and approve or require modifica-
23 tions to emergency contingency plans submitted
24 under subsection (a) and updates submitted under
25 subsection (e) to ensure that the plans and updates

1 will effectively address emergencies and provide for
2 the health and safety of passengers.

3 “(2) CIVIL PENALTIES.—The Secretary may as-
4 sess a civil penalty under section 46301 against an
5 air carrier or airport that does not adhere to an
6 emergency contingency plan approved under this
7 subsection.

8 “(g) MINIMUM STANDARDS.—The Secretary may es-
9 tablish, as necessary or desirable, minimum standards for
10 elements in an emergency contingency plan required to be
11 submitted under this section.

12 “(h) PUBLIC ACCESS.—An air carrier or airport re-
13 quired to submit emergency contingency plans under this
14 section shall ensure public access to such plan after its
15 approval under this section on the Internet Web site of
16 the carrier or airport or by such other means as deter-
17 mined by the Secretary.

18 **“§ 42302. Consumer complaints**

19 “(a) CONSUMER COMPLAINTS HOTLINE TELEPHONE
20 NUMBER.—The Secretary of Transportation shall estab-
21 lish a consumer complaints hotline telephone number for
22 the use of passengers in air transportation.

23 “(b) PUBLIC NOTICE.—The Secretary shall notify
24 the public of the telephone number established under sub-
25 section (a).

1 “(c) AUTHORIZATION OF APPROPRIATIONS.—There
 2 are authorized to be appropriated such sums as may be
 3 necessary to carry out this section. Such sums shall re-
 4 main available until expended.

5 **“§ 42303. Use of insecticides in passenger aircraft**

6 “‘No air carrier, foreign air carrier, or ticket agent
 7 may sell in the United States a ticket for air transpor-
 8 tation for a flight on which a insecticide has been applied
 9 in the aircraft within the last 60 days or on which an in-
 10 secticide is planned to be used in the aircraft while pas-
 11 sengers are on board the aircraft unless the air carrier,
 12 foreign air carrier, or ticket agent selling the ticket first
 13 informs the person purchasing the ticket of the applica-
 14 tion, application, or planned use of the insecticide, includ-
 15 ing the name of the insecticide.’”.

16 (b) CLERICAL AMENDMENT.—The analysis for sub-
 17 title VII is amended by inserting after the item relating
 18 to chapter 421 the following:

“423. Air Passenger Service Improvements 42301”.

19 (c) PENALTIES.—Section 46301 is amended in sub-
 20 sections (a)(1)(A) and (c)(1)(A) by inserting “chapter
 21 423,” after “chapter 421,”.

22 (d) APPLICABILITY OF REQUIREMENTS.—Except as
 23 otherwise specifically provided, the requirements of chap-
 24 ter 423 of title 49, United States Code, as added by this

1 section, shall begin to apply 60 days after the date of en-
2 actment of this Act.

3 **SEC. 103. REVIEW OF AIR CARRIER FLIGHT DELAYS, CAN-**
4 **CELLATIONS, AND ASSOCIATED CAUSES.**

5 (a) REVIEW.—The Inspector General of the Depart-
6 ment of Transportation shall conduct a review regarding
7 air carrier flight delays, cancellations, and associated
8 causes to update its 2000 report numbered CR–2000–112
9 and entitled “Audit of Air Carrier Flight Delays and Can-
10 cellations”.

11 (b) ASSESSMENTS.—In conducting the review under
12 subsection (a), the Inspector General shall assess—

13 (1) the need for an update on delay and can-
14 cellation statistics, such as number of chronically de-
15 layed flights and taxi-in and taxi-out times;

16 (2) air carriers’ scheduling practices;

17 (3) the need for a re-examination of capacity
18 benchmarks at the Nation’s busiest airports; and

19 (4) the impact of flight delays and cancellations
20 on air travelers, including recommendations for pro-
21 grams that could be implemented to address the im-
22 pact of flight delays on air travelers.

23 (c) REPORT.—Not later than one year after the date
24 of enactment of this Act, the Inspector General shall sub-
25 mit to the Committee on Transportation and Infrastruc-

1 ture of the House of Representatives and the Committee
2 on Commerce, Science, and Transportation of the Senate
3 a report on the results of the review conducted under this
4 section, including the assessments described in subsection
5 (b).

6 **SEC. 104. EUROPEAN UNION RULES FOR PASSENGER**
7 **RIGHTS.**

8 (a) IN GENERAL.—The Comptroller General shall
9 conduct a study to evaluate and compare the regulations
10 of the European Union and the United States on com-
11 pensation and other consideration offered to passengers
12 who are denied boarding or whose flights are cancelled or
13 delayed.

14 (b) SPECIFIC STUDY REQUIREMENTS.—The study
15 shall include an evaluation and comparison of the regula-
16 tions based on costs to the air carriers, preferences of pas-
17 sengers for compensation or other consideration, and
18 forms of compensation. In conducting the study, the
19 Comptroller General shall also take into account the dif-
20 ferences in structure and size of the aviation systems of
21 the European Union and the United States.

22 (c) REPORT.—Not later than one year after the date
23 of enactment of this Act, the Comptroller General shall
24 submit a report to Congress on the results of the study.

1 **SEC. 105. ESTABLISHMENT OF ADVISORY COMMITTEE FOR**
2 **AVIATION CONSUMER PROTECTION.**

3 (a) IN GENERAL.—The Secretary of Transportation
4 shall establish an advisory committee for aviation con-
5 sumer protection (in this section referred to as the “advi-
6 sory committee”) to advise the Secretary in carrying out
7 air passenger service improvements, including those re-
8 quired by chapter 423 of title 49, United States Code.

9 (b) MEMBERSHIP.—The Secretary shall appoint 8
10 members to the advisory committee as follows:

11 (1) Two representatives of air carriers required
12 to submit emergency contingency plans pursuant to
13 section 42301 of title 49, United States Code.

14 (2) Two representatives of the airport operators
15 required to submit emergency contingency plans pur-
16 suant to section 42301 of such title.

17 (3) Two representatives of State and local gov-
18 ernments who have expertise in aviation consumer
19 protection matters.

20 (4) Two representatives of nonprofit public in-
21 terest groups who have expertise in aviation con-
22 sumer protection matters.

23 (c) VACANCIES.—A vacancy in the advisory com-
24 mittee shall be filled in the manner in which the original
25 appointment was made.

1 (d) TRAVEL EXPENSES.—Members of the advisory
2 committee shall serve without pay but shall receive travel
3 expenses, including per diem in lieu of subsistence, in ac-
4 cordance with subchapter I of chapter 57 of title 5, United
5 States Code.

6 (e) CHAIRPERSON.—The Secretary shall designate,
7 from among the individuals appointed under subsection
8 (b), an individual to serve as chairperson of the advisory
9 committee.

10 (f) DUTIES.—The duties of the advisory committee
11 shall include the following:

12 (1) Evaluating existing aviation consumer pro-
13 tection programs and providing recommendations for
14 the improvement of such programs, if needed.

15 (2) Providing recommendations to establish ad-
16 ditional aviation consumer protection programs, if
17 needed.

18 (g) REPORT.—Not later than February 1 of each of
19 the first 2 calendar years beginning after the date of en-
20 actment of this Act, the Secretary shall transmit to Con-
21 gress a report containing—

22 (1) each recommendation made by the advisory
23 committee during the preceding calendar year; and

24 (2) an explanation of how the Secretary has im-
25 plemented each recommendation and, for each rec-

1 ommendation not implemented, the Secretary's rea-
2 son for not implementing the recommendation.

3 **SEC. 106. DENIED BOARDING COMPENSATION.**

4 (a) IN GENERAL.—Not later than one year after the
5 date of enactment of this Act, the Secretary of Transpor-
6 tation shall issue a final regulation to modify section 250
7 of title 14, Code of Federal Regulations, regarding denied
8 boarding compensation, to appropriately adjust the
9 amount of such compensation for an aircraft with 30 or
10 more seats.

11 (b) EVALUATION.—Not later than 2 years after the
12 date of issuance of the final regulation under this section
13 and every 2 years thereafter, the Secretary shall evaluate
14 the amount provided for denied boarding compensation
15 and issue a regulation to adjust such compensation as nec-
16 essary.

17 **SEC. 107. EXPANSION OF DOT AIRLINE CONSUMER COM-**
18 **PLAINT INVESTIGATIONS.**

19 (a) IN GENERAL.—Subject to the availability of ap-
20 propriations, the Secretary of Transportation shall inves-
21 tigate consumer complaints regarding—

22 (1) flight cancellations;

23 (2) compliance with Federal regulations con-
24 cerning overbooking seats flights;

- 1 (3) lost, damaged, or delayed baggage, and dif-
- 2 ficulties with related airline claims procedures;
- 3 (4) problems in obtaining refunds for unused or
- 4 lost tickets or fare adjustments;
- 5 (5) incorrect or incomplete information about
- 6 fares, discount fare conditions and availability, over-
- 7 charges, and fare increases;
- 8 (6) the rights of passengers who hold frequent
- 9 flier miles or equivalent redeemable awards earned
- 10 through customer-loyalty programs; and
- 11 (7) deceptive or misleading advertising.

12 (b) BUDGET NEEDS REPORT.—The Secretary shall
 13 provide, as an annex to its annual budget request, an esti-
 14 mate of resources which would have been sufficient to in-
 15 vestigate all such claims the Department of Transpor-
 16 tation received in the previous fiscal year. The annex shall
 17 be transmitted to Congress when the President submits
 18 the budget of the United States to the Congress under
 19 section 1105 of title 31, United States Code.

20 **TITLE II—FAA EMPLOYEES**

21 **SEC. 201. FEDERAL AVIATION ADMINISTRATION PER-** 22 **SONNEL MANAGEMENT SYSTEM.**

23 (a) DISPUTE RESOLUTION.—Section 40122(a) is
 24 amended—

1 (1) by redesignating paragraphs (3) and (4) as
2 paragraphs (5) and (6), respectively; and

3 (2) by striking paragraph (2) and inserting the
4 following:

5 “(2) DISPUTE RESOLUTION.—

6 “(A) MEDIATION.—If the Administrator
7 does not reach an agreement under paragraph
8 (1) or the provisions referred to in subsection
9 (g)(2)(C) with the exclusive bargaining rep-
10 resentative of the employees, the Administrator
11 and the bargaining representative—

12 “(i) shall use the services of the Fed-
13 eral Mediation and Conciliation Service to
14 attempt to reach such agreement in ac-
15 cordance with part 1425 of title 29, Code
16 of Federal Regulations (as in effect on the
17 date of enactment of this clause); or

18 “(ii) may by mutual agreement adopt
19 alternative procedures for the resolution of
20 disputes or impasses arising in the negotia-
21 tion of the collective-bargaining agreement.

22 “(B) BINDING ARBITRATION.—

23 “(i) ASSISTANCE FROM FEDERAL
24 SERVICE IMPASSES PANEL.—If the services
25 of the Federal Mediation and Conciliation

1 Service under subparagraph (A)(i) do not
2 lead to an agreement, the Administrator
3 and the exclusive bargaining representative
4 of the employees (in this subparagraph re-
5 ferred to as the ‘parties’) shall submit
6 their issues in controversy to the Federal
7 Service Impasses Panel. The Panel shall
8 assist the parties in resolving the impasse
9 by asserting jurisdiction and ordering bind-
10 ing arbitration by a private arbitration
11 board consisting of 3 members.

12 “(ii) APPOINTMENT OF ARBITRATION
13 BOARD.—The Executive Director of the
14 Panel shall provide for the appointment of
15 the 3 members of a private arbitration
16 board under clause (i) by requesting the
17 Director of the Federal Mediation and
18 Conciliation Service to prepare a list of not
19 less than 15 names of arbitrators with
20 Federal sector experience and by providing
21 the list to the parties. Within 10 days of
22 receiving the list, the parties shall each se-
23 lect one person from the list. The 2 arbi-
24 trators selected by the parties shall then
25 select a third person from the list within 7

1 days. If either of the parties fails to select
2 a person or if the 2 arbitrators are unable
3 to agree on the third person within 7 days,
4 the parties shall make the selection by al-
5 ternately striking names on the list until
6 one arbitrator remains.

7 “(iii) FRAMING ISSUES IN CON-
8 TROVERSY.—If the parties do not agree on
9 the framing of the issues to be submitted
10 for arbitration, the arbitration board shall
11 frame the issues.

12 “(iv) HEARINGS.—The arbitration
13 board shall give the parties a full and fair
14 hearing, including an opportunity to
15 present evidence in support of their claims
16 and an opportunity to present their case in
17 person, by counsel, or by other representa-
18 tive as they may elect.

19 “(v) DECISIONS.—The arbitration
20 board shall render its decision within 90
21 days after the date of its appointment. De-
22 cisions of the arbitration board shall be
23 conclusive and binding upon the parties.

24 “(vi) COSTS.—The parties shall share
25 costs of the arbitration equally.

1 “(3) RATIFICATION OF AGREEMENTS.—Upon
2 reaching a voluntary agreement or at the conclusion
3 of the binding arbitration under paragraph (2)(B),
4 the final agreement, except for those matters de-
5 cided by an arbitration board, shall be subject to
6 ratification by the exclusive bargaining representa-
7 tive of the employees, if so requested by the bar-
8 gaining representative, and approval by the head of
9 the agency in accordance with the provisions re-
10 ferred to in subsection (g)(2)(C).

11 “(4) ENFORCEMENT.—

12 “(A) ENFORCEMENT ACTIONS IN UNITED
13 STATES COURTS.—Each United States district
14 court and each United States court of a place
15 subject to the jurisdiction of the United States
16 shall have jurisdiction of enforcement actions
17 brought under this section. Such an action may
18 be brought in any judicial district in the State
19 in which the violation of this section is alleged
20 to have been committed, the judicial district in
21 which the Federal Aviation Administration has
22 its principal office, or the District of Columbia.

23 “(B) ATTORNEY FEES.—The court may
24 assess against the Federal Aviation Administra-
25 tion reasonable attorney fees and other litiga-

1 tion costs reasonably incurred in any case
2 under this section in which the complainant has
3 substantially prevailed.”.

4 (b) APPLICATION.—On and after the date of enact-
5 ment of this Act, any changes implemented by the Admin-
6 istrator of the Federal Aviation Administration on and
7 after July 10, 2005, under section 40122(a) of title 49,
8 United States Code (as in effect on the day before such
9 date of enactment), without the agreement of the exclusive
10 bargaining representative of the employees of the Adminis-
11 tration certified under section 7111 of title 5, United
12 States Code, shall be null and void and the parties shall
13 be governed by their last mutual agreement before the im-
14 plementation of such changes. The Administrator and the
15 bargaining representative shall resume negotiations
16 promptly, and, subject to subsection (c), their last mutual
17 agreement shall be in effect until a new contract is adopt-
18 ed by the Administrator and the bargaining representa-
19 tive. If an agreement is not reached within 45 days after
20 the date on which negotiations resume, the Administrator
21 and the bargaining representative shall submit their issues
22 in controversy to the Federal Service Impasses Panel in
23 accordance with section 7119 of title 5, United States
24 Code, for binding arbitration in accordance with para-
25 graphs (2)(B), (3), and (4) of section 40122(a) of title

1 49, United States Code (as amended by subsection (a) of
2 this section).

3 (c) SAVINGS CLAUSE.—All cost of living adjustments
4 and other pay increases, lump sum payments to employ-
5 ees, and leave and other benefit accruals implemented as
6 part of the changes referred to in subsection (b) may not
7 be reversed unless such reversal is part of the calculation
8 of back pay under subsection (d). The Administrator shall
9 waive any overpayment paid to, and not collect any funds
10 for such overpayment, from former employees of the Ad-
11 ministration who received lump sum payments prior to
12 their separation from the Administration.

13 (d) BACK PAY.—

14 (1) IN GENERAL.—Employees subject to
15 changes referred to in subsection (b) that are deter-
16 mined to be null and void under subsection (b) shall
17 be eligible for pay that the employees would have re-
18 ceived under the last mutual agreement between the
19 Administrator and the exclusive bargaining rep-
20 resentative of such employees before the date of en-
21 actment of this Act and any changes were imple-
22 mented without agreement of the bargaining rep-
23 resentative. The Administrator shall pay the employ-
24 ees such pay subject to the availability of amounts
25 appropriated to carry out this subsection. If the ap-

1 appropriated funds do not cover all claims of the em-
2 ployees for such pay, the Administrator and the bar-
3 gaining representative, pursuant to negotiations con-
4 ducted in accordance with section 40122(a) of title
5 49, United States Code (as amended by subsection
6 (a) of this section), shall determine the allocation of
7 the appropriated funds among the employees on a
8 pro rata basis.

9 (2) AUTHORIZATION OF APPROPRIATIONS.—

10 There is authorized to be appropriated \$20,000,000
11 to carry out this subsection.

12 (e) INTERIM AGREEMENT.—If the Administrator and
13 the exclusive bargaining representative of the employees
14 subject to the changes referred to in subsection (b) reach
15 a final and binding agreement with respect to such
16 changes before the date of enactment of this Act, such
17 agreement shall supersede any changes implemented by
18 the Administrator under section 40122(a) of title 49,
19 United States Code (as in effect on the day before such
20 date of enactment), without the agreement of the bar-
21 gaining representative, and subsections (b) and (c) shall
22 not take effect.

○